

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:PA:APJP:B02:GThomas
POSTNO-107869-06

date: April 17, 2006

to: Acting Director
Office of Professional Responsibility
Attn: Michael Hahn

Richard S. Holtz

from: Special Counsel to the Associate Chief Counsel
(Procedure & Administration)

subject: Hawaii Public Accountants

This memorandum responds to your inquiry regarding practice before the Service by Hawaii public accountants.

Issue

Whether individuals who hold current public accountant permits in Hawaii, but who are not certified public accountants, are eligible to practice before the IRS.

Conclusion

Yes. The statute and regulations provide that individuals who are duly qualified to practice as CPAs in any state, territory, or possession of the United States or the District of Columbia may represent a person before the IRS. Under Hawaii law, licensed public accountants who hold current permits to practice public accountancy have the same rights and privileges as CPAs. Thus, for purposes of Circular 230, licensed public accountants who possess permits to practice public accountancy in Hawaii are eligible to practice before the IRS.

Facts

Two categories of individuals may practice public accountancy in Hawaii: CPAs and public accountants. Under Hawaii law, CPAs generally must be of good moral character, must satisfy certain educational and experience requirements, and must pass the CPA exam. Public accountants are individuals who are qualified and accepted for registration under prior law.

PMTA: 00790

Law and Analysis

Section 500(c) of title 5 of the United States Code sets forth the general rules for practicing before the United States' administrative agencies. This section provides that an individual who is duly qualified to practice as a CPA in a State may represent a person before the IRS by filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts. The regulations governing practice before the IRS (Circular 230) mirror 5 U.S.C. § 500(c). Section 10.2(b) of Circular 230 defines a CPA, in relevant part, as any person who is duly qualified to practice as a CPA in any State. Section 10.3(b) further provides that any CPA who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS by filing a written declaration that he or she is currently qualified as a CPA and is authorized to represent the party or parties on whose behalf he or she acts.

The decision to include CPAs within the class of professionals entitled to practice before the IRS by virtue of their State professional status is discussed in H.R. Rep. No. 89-1141 (1965). In explaining why CPAs are not subject to the Service's admission procedures, the House noted:

[T]here is a presumption that members in good standing of the profession[] of . . . certified public accountancy are of good moral character, and that surveillance by . . . State associations of certified public accounts [sic] will sufficiently insure the integrity of practice by such persons before the Internal Revenue Service. The cumbersome admission procedures of the Internal Revenue Service seem unwarranted in their impact on duly qualified . . . certified public accountants.

Id. at 4.

Section 466-3 of the Hawaii Revised Statutes defines the "practice of public accountancy" as the performance or offering to perform for a client or potential client:

- One or more kinds of services involving the use of accounting or auditing skills,
- One or more kinds of management advisory or consulting services, or
- The preparation of tax returns or the furnishing of tax advice..

Hawaii requires a person to have a license and a permit to actively practice public accountancy in the State. Haw. Rev. Stat. § 466-7(a) (2006); see also §§ 466-5(a) and 466-6(a) (2006). For these purposes a "license" means the document issued by the State Board of Accountancy to a person designated as a CPA, a person licensed as a public accountant, or a valid comparable certificate, registration, or license of CPA or

public accountant issued after examination under the law of any other state or foreign country. Haw. Rev. Stat. § 466-3 (2006); Hawaii will license as a CPA any person who:

- has attained the age of 18,
- possesses a history of competence, trustworthiness and fair dealing,
- meets the requisite educational, experience and examination requirements, and
- paid the appropriate fees and assessments.

Haw. Rev. Stat. § 466-5(a)(2006). Only those persons with a history of competence, trustworthiness, and fair dealing who were serving in the armed forces of the United States on June 15, 1955, and who resided in the Territory of Hawaii at the time of entering such service may be licensed as public accountants.¹ Haw. Rev. Stat. § 466-6(a) (2006). Permits to practice public accountancy will be issued only to holders of a valid CPA or public accountant license. Haw. Code R. § 16-71-24 (2006); see Haw. Rev. Stat. § 466-7(a) (2006)(providing that "[t]he Board shall prescribe the methods and requirements for application").²

Section 466-7(b)(2) of the Hawaii Revised Statutes provides that CPAs and public accountants must complete continuing professional education hours as specified by the Board. Further, CPAs and public accountants may be disciplined and potentially lose their certificate or license to practice for any violation of the conduct provisions contained in section 466-9 of the Hawaii Revised Statutes.

Thus, Hawaii permits individuals licensed as public accountants to practice accountancy within the State, provided that these individuals meet the same ethical and continuing education requirements imposed on CPAs. Hawaii also gives these individuals the

¹ A Hawaii resident who was serving in the United States armed services on June 15, 1955, can obtain a public accountants license by submitting an application to the State Board of Accountancy within six months after his honorable discharge or release from the armed services if he:

- held himself out to the public as being engaged in the practice of public accountancy,
- was engaged in accounting or auditing work in Hawaii as an employee of the United States, Hawaii, or any county in a grade GS-9 position, or
- was engaged in private accounting or auditing for 3 or more years.

Haw. Rev. Stat. § 466-6(a)(5)(2006).

² As of January 11, 2006, 18 persons held current Hawaii public accountant licenses and permits. Hawaii Dept. of Commerce and Consumer Affairs, Prof. And Voc. Licensing Division, Geographic Report, Table 3, page 1 (Jan. 11, 2006).

same rights and privileges as CPAs. Licensed public accountants who have a valid permit to practice public accountancy in Hawaii, therefore are, for practical purposes, CPAs. Accordingly, licensed public accountants who possess a valid permit to practice public accounting in Hawaii are eligible to practice before the IRS.

If you have any questions, please contact this office at (202) 622-3400

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